is being charged.[109] Conversely, descriptions that convey ambiguous or vague information, such as, for example, charges identified as "miscellaneous," would not conform to our guideline.[110] Similarly, in our view, a charge described by what it is *not*, such as, for example, "service not regulated by the Public Service Commission" is inherently ambiguous and does not disclose sufficient information. There is no way for a consumer to discern from this description that the charge refers to, for example, inside wiring maintenance insurance.[111]

41. Although carriers must provide sufficient information, we emphasize that full descriptions do not mean redundant or unnecessary explanations. In particular, carriers need not define those terms that are already generally understood by consumers, such as "local service" or "long distance service." Similarly, carriers need not identify every long distance call as being a long distance call. Rather, they may simply identify a section of the telephone bill as "long distance service," followed by an itemized description of calls showing the destination cities, the numbers dialed, the date, and the charge for each call. We also invite carriers to consider using graphical presentations such as symbols, color coding, etc., to identify services in a space-efficient manner.[112] Such methods may make it easier for small carriers to comply with our rules since it may afford them flexibility to work within the technical parameters of their current billing systems. We do not prescribe any particular methods of presentation, organization, or language, but rather encourage carriers to be innovative in designing bills that provide clear descriptions of services rendered.

42. A few commenters have expressed concern that including full descriptions of the services appearing on telephone bills could overburden the rather limited capabilities of some carrier legacy billing systems.[113] In response, we point out that several carriers recently have undertaken efforts to improve their billing formats, after recognizing that the format of

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[109] *See, e.g.*, NASUCA comments at 15-16 (description should be conveyed in terms generally understood by ordinary customer); *see also* USP&C comments at 4-5 (descriptions should not use terminology comprehensible only to those who are well versed in telecommunications regulatory matters).

[110] We agree with NASUCA that no charge should be identified as "miscellaneous" or described by ambiguous terms that may confuse a customer or suggest that a service or product is regulated when in fact it is not. NASUCA comments at 16.

[111] *See* Bills Project comments at 4 (describing Bell Atlantic line item charge).

[112] *See, e.g.*, UCAN comments at 8.

[113] *See, e.g.*, USTA comments at 5 (mentioning 30 character limit for service descriptions; USTA also maintains that many legacy billing systems have limited capabilities with respect to changing bill formats or including significantly more information); U S West comments at 21 (character limits prevent detailed service descriptions); Qwest comments at 6-7. *But see* CompTel comments at 5 (characterizing cost of providing summary and status pages and toll-free customer contact number as "modest").

old bills did not meet consumers' needs.[114] More importantly, we simply cannot accept that it is reasonable for consumers to be deprived of clear descriptions of the services they may have purchased because carriers have not upgraded their systems to accommodate this most basic of disclosure obligations. Nor are we persuaded that the meaningful consumer protection against slamming and cramming that our service description guideline will provide should be held hostage to claims of antiquated billing processes. Moreover, we believe the flexibility permitted under our guidelines affords carriers many options to enable them to provide clear and meaningful service descriptions that may not necessitate costly modifications to their existing billing systems. In any event, we agree with FTC and TOPC that telephone bills that accurately describe the services and charges appearing on them will enable consumers to take greater advantage of the new products and services available in the telecommunications marketplace.[115]

43. Although we decline to formulate standardized descriptions, we encourage carriers to develop uniform terminology, as recommended by NCL, Bills Project, and the Kansas Commission.[116] We believe that industry is better equipped than the Commission to develop, in conjunction with consumer focus groups, standardized descriptions that are compatible with the character limitations for text messages and other operational restrictions found in the systems currently used for billing. Adopting understandable common descriptions for services offered could enable consumers to comparison shop more readily, and thereby take full advantage of the benefits of a competitive telecommunications market.

b. "Deniable" and "Non-Deniable" Charges

44. We further conclude that, where additional carrier charges are billed along with local wireline service, reasonable practice necessitates that carriers clarify when non-payment for service would not result in the termination of the consumer's basic local service. More specifically, we adopt the guideline we proposed in the *Notice* that telephone bills differentiate

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[114] GTE comments at 5-7; USTA comments at 8; Bell Atlantic comments at 3-4; Ameritech comments at 2; MCI comments at 6-7.

[115] *See, e.g.,* FTC comments at 3; TOPC reply at 2-3.

[116] NCL contends that we should create standard terms for carriers to use to describe services rendered, just as the Food and Drug Administration prescribes standard terms to refer to different food products. NCL suggests that providers that wish to use their own brand names or marketing terms should be obliged to also show the standard FCC description for each service. Developing standard terms should be collaborative process among companies, regulators, and consumer advocates, and NCL suggests that the proposed descriptions be tested with consumers to ensure they are understood. NCL comments at 7-8. *See also* Bills Project comments at 4; Kansas Commission comments at 4.

between what are commonly referred to as "deniable" and "non-deniable" charges.[117] A "deniable" charge is a charge that, if not paid, may result in the termination -- "denial" -- of the customer's local exchange service. Conversely, a "non-deniable" charge is a charge that will not result in the termination of the customer's basic service for non-payment, even though the particular service for which the charge has been levied, *e.g.*, paging service, could be terminated.[118] We agree with the comments of state regulatory agencies and consumer advocacy groups that distinguishing between such charges on consumers' bills protects consumers from paying contestable, unauthorized charges out of fear of losing basic telephone service for non-payment.[119] Based on this consumer protection rationale, many states, including New York, Pennsylvania, Ohio, California, Oregon, and Arizona have enacted similar requirements.[120] The FTC comments that providing this information on bills will reduce slamming and cramming by enabling consumers to question charges without fear of losing service.[121] We agree that consumers should not be intimidated into paying contestable charges because of fear that they will lose telephone service. We likewise believe that consumers must be fully empowered and apprised of their right to refuse to pay for unauthorized charges. Accordingly, we conclude that carriers must clearly identify on bills those charges for which non-payment will not result in disconnection of basic, local service.[122]

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[117] *Notice*, 13 FCC Rcd at 18189.

[118] *Id.*

[119] *See, e.g.,* Nevadacom comments at 4-5 (distinguishing between deniable and non-deniable charges will reduce tendency of consumers to pay unauthorized charges out of fear that local service will be disconnected if they fail to pay and arguing that this Commission should reaffirm that it and state commissions, and not the LECs, have authority to determine which charges are deniable); Small Business comments at 13 (such disclosure is necessary so that small business users will know what charges they can contest and not pay pending resolution of their complaint without fear of having their service disconnected); TCA comments at 7-9 (recounting specific instances where customer service representatives attempted to intimidate and to mislead intentionally consumers into believing that service would be cut off for failure to pay a non-deniable charge); Wisconsin Commission comments at 4 (noting that the threat of loss of service is not an appropriate collection tool); NASUCA comments at 16; USP&C comments at 6-7; NYCPB comments at 13; BRTF comments at 3-4; FTC comments at 15-16; Maine Commission comments at 7; Ohio Commission comments at 9-10; Missouri Commission comments at 4; Florida Commission comments at 6-7; TOPC comments at 1-2; AARP comments at 3; Bills Project comments at 7; UCAN comments at 9; Kansas Commission comments at 5; NACAA comments at 2; Pennsylvania Commission comments at 7; West Virginia Commission comments at 2.

[120] *See* NYCPB comments at 13.

[121] FTC comments at 15-16.

[122] *See* 47 C.F.R. § 64. 1510(c)(1); *see also Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act,* Report and Order, 8 FCC Rcd 6885, 6898 (1993).

45. We agree with those commenters who state that the terms "deniable" and "non-deniable" are inherently confusing, if not counter-intuitive, and therefore fail to achieve the basic goal of signalling to consumers their rights with respect to such charges.[123] Rather than mandate any particular means for accomplishing this goal, however, we merely require that carriers clearly and conspicuously identify those charges for which nonpayment will not result in termination of local service. We note with approval the suggestions of some commenters that this may be best accomplished by noting charges with an asterisk or other symbol directing the consumer to an explanatory footnote.[124] This footnote could provide information similar to that mandated by the pay-per-call provisions of the Act.[125] Carriers may also elect to devise other methods of informing consumers on the bill that they may contest charges prior to payment.[126]

46. We emphasize, however, that this guideline only applies where carriers include in a single bill both "deniable" and "non-deniable" charges. Accordingly, a carrier that bills directly for service that includes no charges for basic, local wireline service would not have a disclosure obligation. In this direct billing circumstance, we are persuaded that consumers understand that, for example, their wireless or interexchange service may be disconnected should they fail to pay the bill for the specific service involved, but that their basic local service, billed on a separate invoice, will not be disconnected.[127] Accordingly, requiring carriers to disclose such information on direct bills that contain no basic local service charges would place a burden on carriers without any corresponding consumer benefit. We further note that, whether a charge is or is not "deniable" varies according to state law. Our requirement is not meant to preempt states that have yet to adopt such a distinction.

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[123] *See, e.g.*, NASUCA comments at 16 (stating that terms "deniable" and "undeniable" are not easily understood by average customers, and that clear disclosure that basic service cannot be terminated if non-basic or unregulated charges are unpaid would be preferable); Maine Commission comments at 7.

[124] *See, e.g.*, AARP comments at 3 (noting that monthly bill could identify deniable charges with an asterisk and include a brief description of the terms deniable and non-deniable at the bottom of the bill); BellSouth comments at 9 (recommending use of an asterisk).

[125] Section 228 of the Act states that carriers must annotate pay-per-call charges on telephone bills as follows: "Common carriers may not disconnect local or long distance service for failure to pay disputed charges for information service." 47 U.S.C. § 228(c)(8)(B)(ii).

[126] We note that the precise language used to describe clearly and conspicuously those charges for which non-payment would not result in termination of local service is at the discretion of the carrier that is seeking payment for these charges. Thus, while a carrier may elect to have another entity bill the charges, this guideline does not permit the billing entity to decide unilaterally the appropriate language.

[127] *See, e.g.*, US Cellular comments at 6-7 (arguing that the distinction between "deniable" and "non-deniable" charges possesses little relevance for wireless carriers as all wireless charges are "deniable").

47. We are unpersuaded by some commenters that customers should be informed of these rights through a "dunning message" issued prior to termination of service for non-payment, rather than through the telephone bill.[128] Such an approach does not protect those consumers who pay charges that they did not authorize out of the mistaken fear that their service will be disconnected if they fail to pay.[129] The complaints we receive demonstrate that many consumers pay disputable charges immediately, even if they believe the charge is unauthorized, out of fear of losing local service. These consumers would not receive any dunning notice and, thus, would remain unaware of their rights with regard to these charges.

48. We are also not persuaded by those commenters who contend that this guideline may lead to an increase in non-payment of legitimate charges that will outweigh the consumer benefits.[130] Although carriers must clearly identify those charges for which non-payment will not affect local service, the guideline does not prevent carriers from reminding customers of their obligation to pay all authorized charges and of the consequences, such as credit bureau reporting, of a failure to pay any authorized charge. Carriers may, for instance, remind customers that failure to pay a legitimate charge for paging would not result in the customer's loss of local exchange service, but might result in termination of the paging service, collection action by the paging provider, and damage to the customer's credit rating. We find that such notice will adequately deter consumers from withholding payment of authorized charges. Moreover, insofar as consumers *do* have a right to contest such charges without risk of losing basic service, any suggestion to the contrary -- either explicit *or implicit* -- is misleading and infringes on the customer's ability to exercise those rights.

c. Standardized Labels For Charges Resulting from Federal Regulatory Action

49. We conclude that the principle of full and non-misleading descriptions also extends to carrier charges purportedly associated with federal regulatory action. Consistent with our core principle that charges should be clearly described in a manner that allows consumers to understand them, we expressed concern in the *Notice* that consumers may be less likely to engage in comparative shopping among service providers if they are led

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[128] *See, e.g.*, Media One comments at 3; Commonwealth comments at 5; Qwest comments at 7; Ameritech comments at 15.

[129] *Notice*, 13 FCC Rcd at 18189.

[130] *See, e.g.*, GTC comments at 14-16; Media One comments at 1-4; PMT comments at 5-6; NITCO comments at 4; Liberty comments at 4; CompTel comments at 7-8; C&W comments at 11; Commonwealth comments at 4; Century comments at 5-6; SBC comments at 14-15; Sprint comments at 14-16; Excel comments at 11; ALTS comments at 9-10; Time Warner comments at 14; ACTA comments at 8; Bell Atlantic comments at Attachment, "Answers to Specific Questions," at 9-10; Ameritech comments at 15-16; GST comments at 21-24.

erroneously to believe that certain rates or charges are federally mandated amounts from which individual carriers may not deviate.[131] Moreover, we noted that complaints received by the Commission indicate considerable consumer confusion with regard to various line item charges appearing on their monthly service bills that are assessed by carriers ostensibly to recover costs incurred as a result of specific government action.[132] Charges resulting from federal regulatory action are "charges, practices [or] classifications . . . for and in connection with" interstate communication service pursuant to section 201(b), and accordingly, we possess jurisdiction to require carriers to employ standardized labels for such charges.

50. We find that the substantial record on this issue supports our adoption of guidelines to address customers' confusion and potential for misunderstanding concerning the nature of these charges. Specifically, for the reasons discussed more fully below, we adopt our proposals that require carriers to identify line item charges associated with federal regulatory action through a standard industry-wide label and provide full, clear and non-misleading descriptions of the nature of the charges, and display a toll-free number associated with the charge for customer inquiries. While we adopt guidelines to facilitate consumer understanding of these charges and comparison among service providers, we decline the recommendations of those that would urge us to limit the manner in which carriers recover these costs of doing business.

51. We focus particularly on three types of line items that have appeared on consumers' bills. Specifically, the 1996 Act instructed the Commission to establish support mechanisms to ensure that all Americans have access to affordable telecommunications services. Pursuant to this directive, the Commission is in the process of fundamentally altering the manner in which long distance carriers pay for access to the networks of local carriers and for supporting the universal availability of telecommunications services at just, reasonable, and affordable rates.[133] Although the Commission did not direct the manner in which carriers could recover their universal service contributions or access fees directly from their customers,[134] and substantially reduced the access rates charged to long distance carriers

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[131] *Notice*, 13 FCC Rcd at 18188.

[132] For instance, from January 1998 through May 1998, the Federal Communications Commission's National Call Center received approximately 10,000 calls per month from consumers with questions regarding charges on their bills.

[133] *See Access Charge Reform*, First Report and Order, CC Docket No. 96-262, 12 FCC Rcd 15982 (1997) (*Access Reform Order*); *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (1997) (*Universal Service Order*).

[134] *See Universal Service Order*, 12 FCC Rcd at 9211; *Access Reform Order*, 12 FCC Rcd at 16005.

to offset their new universal service obligations,[135] some carriers began including on their customers' bills line item charges purportedly intended to recover these costs. These fees have been charged in connection with consumers' long distance service. The amounts charged and the name describing the universal service-related fees, however, have varied considerably among carriers. For example, some carriers have labelled the fee as "Universal Connectivity Charge," "Federal Universal Service Fee," "Carrier Universal Service Charge," and even "Local Service Subsidy,"[136] and charges have ranged from $.93 per bill to 5% of the customers' net interstate and international charges.[137] Access related charges and associated names have likewise varied by carrier.[138] The nature of these charges is, in some instances, further confused because different charges may be assessed on the consumer's "primary," or first line, than on a consumer's subsequent or "non-primary" lines.[139]

52. Local exchange carriers have also chosen to assess various line item charges associated with federal regulatory action. Since 1985, the Commission has allowed local exchange carriers to assess a "subscriber line charge," (SLC), also known as the end-user common line charge. This charge allows local exchange carriers to recover a portion of the costs for providing local loops.[140] More recently, pursuant to the dictates of the 1996 Act, the Commission permitted local exchange carriers to recover through a line-item charge on end-user bills the costs associated with implementing local number portability, which allows a consumer to retain the same phone number when changing local phone companies.[141] This

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[135] The Presubscribed Interexchange Carrier Charge (PICC) is the charge billed by interexchange carriers to recover a portion of the fees paid to local telephone companies for access to their networks.

[136] Florida Commission comments at Attachment A.

[137] *Id.*

[138] Some labels for line-item charges for the recovery of access fees include "Carrier Line Charge," "National Access Fee," "Presubscribed Line Charge," and "PIC Charge." *Id.*

[139] Pursuant to our access charge rules, carriers may set higher caps for the subscriber line charges and presubscribed interexchange carrier charges assessed on non-primary residential lines and multi-line business lines than on primary residential lines and single line business lines. In the *Primary Lines Order*, we adopted requirements for differentiating and identifying such lines and decided to consider whether to require carriers to provide consumers with a uniform disclosure statement describing the distinction between primary and non-primary residential lines in conjunction with this, our Truth-in-Billing proceeding. *Defining Primary Lines*, Report and Order & Further Notice of Proposed Rulemaking, CC Docket No. 97-181, 1999 WL 125821 (1999) (*Primary Lines Order*). We hereby incorporate the comments from the Primary Lines rulemaking into the record of this proceeding.

[140] *Id.*

[141] *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, 13 FCC Rcd 11701 (1998).

local number portability charge first appeared on some consumers' bills in February, 1999. The amount of the charge, however, as well as the name describing it varies by carrier (*e.g.*, "number portability surcharge;" "local number portability service charge;" "federal charge - service provider number portability").[142]

53. The record in this proceeding supports our concern that the failure of carriers to label and accurately describe certain line item charges on their bills has led to increased consumer confusion about the nature of these changes.[143] Several factors appear to have contributed to this confusion. The names associated with these charges as well as accompanying descriptions (or entire lack thereof) may convince consumers that all of these fees are federally mandated.[144] In addition, a lack of consistency in the way such charges are labelled by carriers makes it difficult for consumers accurately to compare the price of telecommunications services offered by competing carriers.[145]

54. In the *Notice*, we generally sought comment on the methods by which the nature and purpose of these charges could be clarified.[146] We adopt the guideline proposed in our *Notice*, and supported by the great majority of commenters,[147] that line-item charges associated with federal regulatory action should be identified through standard and uniform labels across the industry. We agree that standardized labels will promote consumers' ability to understand their bills, thus facilitating their ability to compare rates and packages among competing providers. Such comparisons are very difficult when carriers choose different

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[142] *See* Jeannine Aversa, *Yet Another New Fee Showing Up On Telephone Bills*, Associated Press Newswires, Feb. 19, 1999.

[143] *See* Bills Project comments at 4 (stating that "[i]n general, consumers are confused by the various taxes, surcharges and other charges that appear on their bills"); NYCPB comments at 13 (stating that in their experience, "many consumers are confused by current explanations on telephone bills concerning access charges and universal service fees.").

[144] *See, e.g.*, Vermont Commission comments at 11 (stating that carriers should avoid suggesting that a charge is a government tax on the consumer); Maine Commission comments at 8 (asserting that carriers "should be required to clearly and unambiguously state that the surcharges are part of the carrier's rate structure and are not mandated by any regulatory or taxing entity.").

[145] *See* AARP comments at 3 (arguing that consumers must be able to compare among carriers to select the best value, but making comparisons becomes difficult if carriers choose different names for the same charge).

[146] *Notice*, 13 FCC Rcd at 18189-90.

[147] *See, e.g.*, SBC comments at 21; Missouri Commission comments at 4; Texas Commission comments at 11; AARP comments at 3; NCL comments at 8; NASUCA reply at 7.

names for the same charge.[148] In considering which specific labels would be most accurate, descriptive and consumer-friendly, however, we believe that consumer groups are particularly well suited to assist in the development of the uniform terms. Accordingly, through a further notice in this proceeding, we encourage consumer and industry groups to come together, conduct consumer focus groups, and propose jointly to the Commission standard labels for these line item charges.[149] We will choose the standard labels based on the suggestions we receive in response to our *Further Notice*.

55. We decline to take a more prescriptive approach as to how carriers may recover these costs. We recognize that several commenters assert that service providers should be required to combine all regulatory fees into one charge,[150] or should be prohibited from separating out any fees resulting from regulatory action.[151] Other commenters urge us to go even farther and require carriers to include on bills per-minute rates that include all fees associated with the service.[152] We decline at this time to mandate such requirements, but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items.[153] We believe that so long as we ensure that consumers are readily able to understand and compare these charges, competition should ensure that they are recovered in an appropriate manner. Moreover, we are concerned that precluding a breakdown of line item charges would facilitate carriers' ability to bury costs in lump figures. Insofar as the regulatory-related charges have different origins, and are applied to different

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[148] *See, e.g., Federal-State Joint Board on Universal Service*, Second Recommended Decision, 13 FCC Rcd 24744, 24772 (1998) (*Second Recommended Decision*) (stating that "[s]tandard nomenclature could benefit consumers by having common language across carriers so that consumers can easily identify the charge.").

[149] *See infra* at section III.A.

[150] California Commission comments at 7-8.

[151] Minnesota OAG comments at 11-12. *See also* RUS reply at 2 (stating that "[e]fforts to break out new line items as universal service fees or taxes are misleading to consumers, particularly since none of the other costs of business, such as advertising, stock options, or salaries, are highlighted in this manner. . . A separate line item charge for universal service may disguise a rate increase, or allow a carrier to advertise an apparently low per-minute rate, a rate [that] doesn't actually exist once the line item is added to the bill.").

[152] For example, NASUCA proposes that carriers be required to disclose the average per line universal service and access charges on the same page as a customer's individual statement of universal service and access charge-related line items. *See* NASUCA comments at 19.

[153] Century reply at 8 (stating that "[c]arriers should have the freedom to respond to consumer demand and market place forces in determining whether to include these charges as part of their rates, to bundle the charges as one line item or to list the charges in separate line items.").

service and provider offerings, we also question whether implementation of a lump-sum figure for all charges resulting from federal regulatory action could be presented in a manner in which consumers could clearly understand the origin of such a charge. On the other hand, we recognize that consumers may benefit from a simplified, total charge approach. As a result, we encourage industry and consumer groups to consider further whether some categorization and aggregation of charges would be advisable. For example, we seek further comment on whether the line item charges associated with long distance service could be or should be identified as a single, uniformly described, charge, while those charges associated with local service be identified by a separate standardized term. Our goal is to enable consumers to make comparisons among different service providers in connection with these charges, but we expect that this end will be accomplished though several means.

56. Although we adopt the guideline that charges be identified through standard labels, carriers may nevertheless choose to include additional language further describing the charges. We are persuaded by the record not to adopt any particular "safe-harbor" language, as set forth in the *Notice*, or mandate specific disclosures.[154] Rather, we believe carriers should have broad discretion in fashioning their additional descriptions, provided only that they are factually accurate and non-misleading. For example, for purposes of good customer relations, a carrier may wish to elaborate on the nature and origin of its universal service charge. A full, accurate and non-misleading description of the charge would be fully consistent with our guideline. In contrast, we would not consider a description of that charge as being "mandated" by the Commission or the federal government to be accurate. Instead, it is the carriers' business decision whether, how, and how much of such costs they choose to recover directly from consumers through separately identifiable charges.[155] Accordingly, to state or imply that the carrier has no choice regarding whether or not such a charge must be

[154] Notably, several commenters state that such language may be regarded as *de facto* mandatory, and that it would be difficult to script language that would be relevant to all carriers in all situations. *See* MCI comments at 38-39; Qwest comments at 7; Paging Network reply at 4.

[155] *See* Bills Project comments at 5; Detecon comments at 4; Kansas Commission comments at 6; Pennsylvania Commission comments at 8. Some commenters suggest that the Commission should eliminate carriers' discretion as to how they recover universal service contributions, and require instead that contributions be recovered through federally mandated surcharges. *See* AT&T comments to *Second Recommended Decision* at 9; Ameritech comments to *Second Recommended Decision* at 11; U S West comments to *Second Recommended Decision* at 15. The Commission previously considered and rejected this approach in the *Universal Service Order*. *Universal Service Order*, 12 FCC Rcd at 9210-11. Based on recommendations from the Joint Board, we concluded that, in a competitive telecommunications market, carriers should be allowed to decide how they should recover their contributions, and mandatory recovery through an end-user surcharge would eliminate carriers' pricing flexibility to the detriment of consumers. *Id.* In its *Second Recommended Decision*, the Joint Board reaffirmed its recommendation that carriers should have the flexibility to decide how they recover their universal service contributions. *Second Recommended Decision*, 13 FCC Rcd at 24,771. We find no compelling reason to depart from our earlier conclusions or the Joint Board's recommendations regarding this issue.

included on the bill or the amount of the charge would be misleading.[156] Our view is consistent with the recent decision of the Federal-State Joint Board on Universal Service which recommended that the Commission "prohibit carriers from depicting [universal service] charges as . . . mandated by the Commission or the federal government by terms or placement on the bill."[157]

57. In the *Notice*, we sought comment on whether it is a violation of section 201(b) for a carrier to bill customers for more than their *pro rata* share of universal service and access fees.[158] Additionally, in the *Second Recommended Decision*, the Joint Board recommended that the Commission consider adopting a rule restricting a carrier from charging a line item assessment in an amount greater than the carrier's universal service assessment rate.[159] We decline, however, to adopt specific rules addressing these concerns. Some commenters assert that it may be impractical accurately to allocate some line-item charges to an individual customer on a per-bill basis.[160] For example, a carrier's universal service contributions may depend on variables whose values are not known at the time the carrier issues a bill, such as the total revenue contribution base of all carriers and the high-cost and low-income projections for universal service support.[161] At least one commenter argues that carriers should be allowed to account for uncollectibles, billing expenses, and administrative expenses in setting the amount of their line item assessments for universal service.[162] Although we decline to adopt specific rules here, we caution that we will not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges.[163]

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[156] *See, e.g.*, NCL comments at 8; Maine Commission comments at 7-8. *See also* RUS reply at 2; Wisconsin Commission comments at 5.

[157] *Second Recommended Decision*, 13 FCC Rcd at 24770. In the *Universal Service Order*, the Commission determined that it would be misleading for carriers to characterize their universal service contributions as a surcharge, because carriers retain the flexibility to structure the recovery of the costs of universal service in many ways. *Universal Service Order*, 12 FCC Rcd at 9211-12.

[158] *See Notice*, 13 FCC Rcd at 18,190.

[159] *See Second Recommended Decision*, 13 FCC Rcd at 24771.

[160] *See* SBC comments at 20; Air Touch comments at 7; Nextel reply at 5-6.

[161] Omnipoint comments at 14-15; PCIA comments at 15-16; Nextel reply at 5-6.

[162] MCI comments to *Second Recommended Decision* at 20-21.

[163] 47 U.S.C. § 201(b).

58. We also decline suggestions to require carriers to provide a detailed breakdown of their costs and cost reductions on their customer bills.[164] The purpose behind these proposals in the *Notice* was to enhance consumers' understanding of the costs of telecommunications services, thereby increasing their ability to determine whether such services are fairly priced. For example, as we reduce the cap on access charges assessed by LECs against IXCs, it would be useful for an individual consumer to be informed of the extent to which his or her IXC passes those access charge reductions through to the consumer in the form of lower long distance rates, and to be able to make comparisons between IXCs on this basis. We agree, however, that long explanations of a carrier's cost calculations may add complexity to telephone bills, creating confusion that outweighs the benefits of providing such descriptions.[165] For these reasons, we also decline to adopt specific language describing the distinction between primary and non-primary residential lines. We conclude that LECs may craft their own descriptions to convey the Commission's primary/non-primary definition to their customers, provided that the information is conveyed truthfully and accurately.[166] We believe, however, that our purpose of enhancing consumers' understanding will be adequately met through the guidelines adopted herein. Indeed, we expect that standard identification of the charges associated with federal regulatory action, in conjunction with accurate and non-misleading descriptions, will enable market forces to reduce these charges to their most economically efficient level.[167] In addition, we note that unjust or unreasonable line-item

[164] We asked for comment on a number of related proposals requiring carriers to disclose or explain particular costs in their monthly bills. Specifically, we asked: (1) whether long distance carriers that include a separate line item for the recovery of universal service contributions should be required to explain the net reduction in their costs of providing long distance service since enactment of the 1996 Act; (2) whether carriers attributing line items to new government action should be required to disclose exact cost reductions, such as reduction in access charge costs, or other related benefits arising from government action; (3) whether carriers who assess a PICC should be required to show whether the corresponding reduction in the per-minute rate was actually passed on to each individual consumer; (4) whether carriers should include the exact cost of PICC and universal service obligations incurred as a result of serving that customer; and (5) whether it would be helpful to consumers if carriers were required to explain in customer bills their reasons for assessing a flat fee or percentage charge to recover amounts that exceed the costs the carrier incurs. *Notice*, 13 FCC Rcd at 18189-90.

[165] *See* SBC comments at 21 (stating that customers want shorter, simpler bills, not bills that attempt to explain the history of telephone regulation and the cost basis for all of the charges shown on the bill).

[166] GTE comments at 17-18 (filed in CC Docket No. 97-181).

[167] *See, e.g.*, Sprint comments at 18-19 (stating that "the Commission can and should rely upon market forces to determine long distance rate levels and to ensure that IXCs pass through any access charge reductions.").

charges are also subject to challenge pursuant to section 201(b) of the Act.[168]

59. We decline to specify any periodic notification to consumers providing additional explanation of any charges resulting from federal regulatory action.[169] We believe our guideline requiring standard labels for such charges should, even without further non-misleading description, provide consumers with, at minimum, notice of these charges. In this regard, we point out that such line-item charges, like all other charges on the bill, are subject to our guideline requiring the prominent display of a toll-free number for consumer inquiries and disputes.[170] We emphasize that carriers' customer service representatives must be prepared to explain fully the nature and purpose of these charges if asked to do so.[171] We believe that the requirements adopted here strike a reasonable balance between the needs of consumers for access to accurate and truthful information regarding these line-item charges and any burden or cost that such requirements may impose on carriers.

60. In balancing the legitimate interest of consumers and carriers, we reject suggestions that standardized labels would violate the First Amendment. We therefore disagree with ACTA's comment that the Commission cannot discourage use of other line-item labels "as a matter of constitutional law," if such descriptions are accurate.[172] We emphasize that we have not mandated or limited specific language that carriers utilize to describe the nature and purpose of these charges; each carrier may develop its own language to describe these charges in detail. Commercial speech that is misleading is not protected speech and may be prohibited.[173] Furthermore, commercial speech that is only potentially misleading may

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[168] 47 U.S.C. § 201(b). We decline, however, to find that it is a *per se* violation of section 201(b) for a carrier to bill customers for more than their *pro rata* share of universal service and access fees. *See Notice*, 13 FCC Rcd at 18190. Some commenters assert that it may be impractical to allocate accurately some line-item charges to an individual customer on a per-bill basis. *See* SBC comments at 20; Air Touch comments at 7; Nextel reply at 5-6. For example, a carrier's universal service contributions may depend on variables whose values are not known at the time the carrier issues a bill, such as the total revenue contribution base of all carriers and the high-cost and low-income projections for universal service support. Omnipoint comments at 14-15; PCIA comments at 16; Nextel reply at 5-6.

[169] *See Notice*, 13 FCC Rcd at 18190.

[170] *See infra* Section II(C)(3) (Clear and Conspicuous Disclosure of Inquiry Contacts).

[171] In addition, customer service representatives should give the caller the option of obtaining a hard copy of the descriptions of these charges via the Internet or regular mail, or both, according to the preference of the customer.

[172] ACTA comments at 8.

[173] *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 563-564 (1980) (*Central Hudson*).

be restricted if the restrictions directly advance a substantial governmental interest and are no more extensive than necessary to serve that interest.[174] Finally, commercial speech that is neither actually nor potentially misleading may be regulated if the government satisfies a three-pronged test: first, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be "narrowly drawn."[175] As explained below, our requirement that carriers use standard terms to label charges resulting from federal regulatory action passes this three-prong test.

61. First, the government's interest in standardized labelling is substantial. The ultimate goal of our regulation is to ensure that consumers pay fair and efficient rates, an interest the Supreme Court found to be substantial in *Central Hudson.*[176] As the record in this proceeding demonstrates, line-item charges are being labelled in ways that could mislead consumers by detracting from their ability to fully understand the charges appearing on their monthly bills, thereby reducing their propensity to shop around for the best value. Consumers misled into believing that these charges are federally mandated, or that the amounts of the charges are established by law or government action, could decide that such shopping would be futile. In addition, lack of standard labelling could make comparison shopping infeasible. Unlike most products purchased by consumers, these line-item charges cannot be attributed to individual tangible articles of commerce. For example, when a consumer purchases socks from the local department store, the consumer knows what item the bill refers to, whether it describes the product as socks, men's wear, hosiery, etc. In contrast, a consumer receives no tangible product in conjunction with a line-item charge on his or her telecommunications bill. If one carrier labels this charge, for example, as "Access Charge," and another uses the term "FCC-Mandated Charge," a consumer will be unable to discern that these labels refer to the same charges. This impedes the consumer's ability to compare and contrast telecommunications services offered by competing entities. The government's interest is substantial in preventing fraudulent and misleading practices by carriers and ensuring that consumers are able to make intelligent and well informed commercial decisions in the increasingly competitive telecommunications market that the 1996 Telecommunications Act is intended to foster. Moreover, consumers have a First Amendment interest in obtaining information on which to base a decision whether to buy a product, and this interest is "served by insuring that the information is not false or deceptive."[177]

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[174] *Id.* at 566.

[175] *Id.*

[176] *Id.* at 568.

[177] *National Commission on Egg Nutrition v. FTC*, 570 F.2d 157, 162 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978).

62. Second, the proposed regulation directly advances the governmental interest. The proposed regulation will ensure that the labels assigned to charges related to federal regulatory action are consistent, understandable, and do not confuse or mislead consumers. In addition, the regulatory scheme will encourage carriers to provide consumers with information that will enable them to understand their telecommunications bills, and prevent carriers from misleading consumers into believing they cannot "shop around" to find carriers that charge less for fees resulting from federal regulatory action.

63. When they take effect, following selection of standardized labels, our labelling regulations will be narrowly drawn to be no more extensive than necessary to serve the government's interest. Narrow tailoring requires a reasonable fit between regulatory ends and means: "[n]ot necessarily the single best disposition but one whose scope is 'in proportion to the interest served.'"[178] The requirement that we adopt -- requiring telecommunications carriers to use specified, uniform labels to identify charges resulting from federal regulatory action -- is narrowly tailored to meet this substantial government interest and does not appreciably affect carriers' ability to describe fully the nature and purpose of these charges in their own words. As stated above, we have not mandated or limited specific language that carriers utilize to describe the nature and purpose of these charges: each carrier may develop its own language to describe these charges in detail. We only prescribe that these charges be presented using a standardized label, so that consumers can comparison shop. Our standardized label requirement is analogous to the disclosure requirements of the Truth in Lending Act (TILA).[179] TILA and its implementing regulations require, for example, that creditors in consumer credit transactions disclose the amount financed and provide descriptive explanations of the applicable annual percentage rate as specified by the Federal Reserve Board.[180] Although disclosure of the annual percentage rate must meet detailed requirements governing how it will be stated and calculated, these requirements have not been challenged as contrary to the First Amendment. Our standardized label requirement is even less onerous, requiring carriers to use the labels, but otherwise leaving them free to determine how best to describe charges related to federal regulatory action in a truthful and nonmisleading manner. The government interest underlying the standardized label requirement is also analogous to that underlying the Truth in Lending Act. The purpose of that statute is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him . . . and to protect the consumer against

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[178] *Board of Trustees v. Fox*, 492 U.S. 469, 480 (1989) (citing *In re R.M.J.*, 455 U.S. 191, 203 (1982)); *see also Ward v. Rock Against Racism*, 109 S. Ct. 2746, 2758 (1989) (a regulation is narrowly tailored if government interest would be achieved less effectively without the regulation).

[179] 15 U.S.C. §§ 1601 *et seq.*

[180] 15 U.S.C. §§ 1606, 1638.

inaccurate and unfair credit billing and credit card practices."[181] Similarly, the principles that we adopt here seek to protect consumers from unreasonable billing practices while enabling them to make informed choices in the increasingly competitive telecommunications market that the Telecommunications Act of 1996 is intended to foster.

64. Finally, several commenters argue that *44 Liquormart v. Rhode Island*[182] prevents us from requiring carriers to employ standard labels for charges resulting from federal regulatory action. We disagree. In *44 Liquormart*, the Supreme Court struck down a ban on all dissemination of price advertising for alcoholic beverages on First Amendment grounds. Here, however, we ban no speech, so carriers remain free to develop their own descriptions of the nature and purpose of these charges, subject only to a labelling requirement. For this reason, *44 Liquormart* is inapposite. Accordingly, we conclude that our regulation is valid under the limited scrutiny that has been afforded restrictions on commercial speech.

3. Clear and Conspicuous Disclosure of Inquiry Contacts

65. The final fundamental truth-in-billing principle we adopt is that consumers must have the necessary tools to challenge charges for unauthorized services. We conclude that carriers must prominently display on their monthly bill a toll-free number or numbers by which customers may inquire or dispute any change on that bill.[183] This telephone number shall be provided in a clear and conspicuous manner, so that the customer can easily identify the appropriate number to use to inquire about each charge.[184] We are cognizant, however, that the service provider is not necessarily the most appropriate entity for consumers to call. A service provider may, for example, contract with the LEC or an independent billing aggregator to provide inquiry and dispute resolution services for charges billed through the

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[181] 15 U.S.C. § 1601(a); *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 363, 365 (1973).

[182] 116 S. Ct. 1495 (1996) (*44 Liquormart*).

[183] BellSouth comments at 9-10 (stating that each provider of billed services should include on the bill page a toll-free telephone number which consumers may contact to obtain information and/or register a complaint); U S West comments at 23 (asserting that it would be helpful to a consumer to have a phone number associated with every service provider, yet the number should not necessarily be that of the service provider itself, but should be a number that can handle inquiries on behalf of the service provider and provide customer resolution of disputes). *See also* Ameritech comments at 16; AT&T comments at 14-15; Sprint comments at 21; C&W comments at 12; Excel comments at 14; NYCPB comments at 14; Wisconsin Commission comments at 6; Missouri Commission comments at 4-5; Maine Commission comments at 8; Ohio Commission comments at 11; Washington Commission Staff comments at 7; NCL comments at 9; USTA comments at 8.

[184] The toll-free number should be accessible to persons with disabilities. For example, the carrier could either have a toll-free TTY line, or their toll-free line should not have barriers to TRS service.

local telephone bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. This will enable customers to avoid feeling that they are "getting the run around." We decline to require carriers to provide a business address on each telephone bill for the receipt of consumer inquiries and complaints. As several commenters have noted, most customers call when they have questions -- they do not write.[185] Accordingly, the inclusion of a business address will not significantly enhance consumers' ability to contact the billing entity. We do require, however, that each carrier make its business address available upon request to consumers through its toll-free number, for those consumers who wish to follow up their complaint or inquiry in writing.[186]

66. We conclude that conspicuous display of a toll-free inquiry and dispute resolution number is an essential linchpin to consumers' exercise of the rights we seek to protect in this Order, as well as in other proceedings such as our new slamming rules.[187] Consumers often experience considerable difficulty in contacting the entity whose charges appear on the telephone bill.[188] This results in delayed resolution of billing problems, often necessitating the intervention of other parties such as the LEC, the state public service commission, or the Commission. Requiring that each telephone bill include at a minimum a toll-free telephone number for the receipt of consumer inquiries and complaints will minimize customer confusion regarding charges on telephone bills and enable consumers to resolve their billing disputes easily and promptly.[189]

67. We decline at this time to adopt standards for the provision of accurate information by carrier customer service representatives.[190] We expect such personnel to be well-trained and that the number of employees is sufficient to handle call volumes, and we assume that competition will provide a strong incentive for each carrier to set appropriate standards on its own initiative. Although we decline to mandate any particular standards for customer service, we remind carriers that the intentional provision of untruthful or misleading

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[185] *See, e.g.*, Bell Atlantic comments at 13.

[186] Carriers should also provide an e-mail address so that their customers will have the option of communicating with the carrier via electronic mail.

[187] *See supra 1998 Slamming Order and Further Notice.*

[188] *See, e.g.*, Washington Commission Staff comments at 7.

[189] *See, e.g.*, Ohio Commission comments at 11.

[190] *See Notice*, 13 FCC Rcd at 18191.

information to a customer regarding the nature and purpose of charges or fees would constitute a violation of section 201(b) of the Act.[191]

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Discussion

1. Application of Rules to CMRS Carriers

68. As we indicated in the Order, we seek comment on whether the remaining truth-in-billing rules we adopt in the wireline context should apply to CMRS carriers. More specifically, we seek comment on whether such rules should be imposed on CMRS carriers in order to protect consumers. As we stated in the Order, we believe that all consumers expect and should receive bills that are fair, clear, and truthful. However, absent evidence that there is a problem with wireless bills, it might not be necessary to apply the remaining rules in the CMRS context. Commenters may wish to address the applicability of a section 10 forbearance analysis. Those commenters who wish to apply such an analysis should address the specific elements of the standard set forth in section 10.[192] We also seek comment on the extent to which the presence of a competitive market is relevant to consumers' ability to protect themselves from the harms we address here.

69. We also note growing evidence that some consumers are substituting wireless

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[191] 47 C.F.R. § 201(b).

[192] Under Section 10, the Commission shall forbear from applying any regulation to a telecommunications carrier or class of carriers if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
(3) forbearance from applying such provision or regulation is consistent with the public interest.

With respect to the public interest analysis, the Commission must also consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

for wireline service.[193] To what extent does this phenomenon affect our application of our guidelines to wireless providers? We also seek comment more generally on the benefit that consumers would derive from application of certain of the guidelines relative to the burden that such application would impose on CMRS carriers. First, as we indicated in the Order, all consumers are entitled to fair, clear, and reasonable practices. We seek comment on how to implement this principle in the CMRS context. For instance, we seek comment on the current billing practices of CMRS providers, including the types and descriptions of charges CMRS providers include in their bills.

70. Second, we seek comment on whether identifying new service providers and "deniable" charges makes sense in the wireless context. For example, because CMRS carriers are excluded from equal access obligations,[194] it appears that CMRS carriers will rarely if ever be required to indicate a new long distance service provider on the bill. Similarly, CMRS carriers indicate in their comments that, unlike the practice in connection with billing for wireline carriers that can give rise to cramming, CMRS carriers do not at this time include charges for services rendered by third party entities.[195] We seek comment on these assertions. Do CMRS providers bill for any other service providers? If so, for what types of services and how pervasive are these billing practices? Likewise, CMRS carriers, as non-LECs, that do their own billing do not have to distinguish between "deniable" and "nondeniable" charges because non payment of charges on a CMRS bill would not result in termination of basic local wireline service.[196] Therefore, our guideline to identify "deniable" charges may have no relevance, and add no benefit, to consumers' CMRS bills.[197]

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[193] *See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 13 FCC Rcd 19746, 19817 (1998) (noting that "mobile telephone operators are beginning . . . to position their services as true replacements for the wire-based services of LECs"); *Id.* at 19819 (The Commission "should hasten the day when consumers begin to view wireless as a real substitute for wireline, and not just a complement.") (Separate Statement of Chairman William E. Kennard). *But see Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (rel. Oct. 13, 1998) at para. 43 (noting that BellSouth's wireline customers, particularly residential customers, are unlikely to switch to wireless service as a competitive alternative to wireline because of rate structure involved).

[194] *1998 Slamming Order and Further Notice* at ¶ 85.

[195] PCIA comments at 7; RCA comments at 2; Air Touch comments at 2; Nextel comments at 2.

[196] *See supra* Section II(C)(2)(b).

[197] We recognize, however, that billing for CMRS may change or evolve from current practices.

2. Standard Labels for Line-Item Charges

71. As discussed in section II(C)(2)(c), we adopt the guideline that carriers must use standardized labels to refer to certain charges relating to federal regulatory action. We seek comment, however, on the specific labels that carriers should adopt. We tentatively conclude that the following labels would be appropriate: "Long Distance Access" to identify charges related to interexchange carriers' costs for access to the networks of local exchange carriers; "Federal Universal Service" to describe line items seeking to recover from customers carriers' universal service contributions; and "Number Portability" to describe charges relating to local number portability. We tentatively conclude that such labels will adequately identify the charges and provide consumers with a basis for comparison among carriers, while at the same time be sufficiently succinct such that most carriers will be able to use them without requiring that they modify the field lengths of their current billing systems. We seek comment on these tentative conclusions. In addition, we seek comment on alternative labels, or appropriate abbreviations for the labeling of these charges. For example, the Florida Commission suggests the terms "Federal Long Distance Access Fee," "FCC Long Distance Access Fee," or "Interstate Long Distance Access Fee" to identify access charges, and "Federal Universal Service Fee," "FCC Universal Service Fee," or "Interstate Universal Service Fee" for universal service related charges.[198] Commenters should explain the merit and basis for their proposed labels, including, for example whether their proposals were chosen or evaluated by consumer focus groups. Indeed, we believe that consumer groups, with input from industry, can contribute greatly to our consideration of the appropriate labels. Finally, we seek comment on how carriers should identify line items that combine two or all of these charges into a single charge. We encourage parties to attempt to reach consensus on the appropriate labels.

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act (RFA),[199] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* in Truth-in-Billing and Billing Format.[200] The Commission sought written public comment on the proposals in the *Notice*,

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[198] Florida Commission comments at 8.

[199] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[200] *Notice*, 13 FCC Rcd at 18194.

including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[201]

1. Need for and Objectives of this Order and the Rules Adopted Herein

73. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verificatio^A^Aprocedures as the Commission shall prescribe."[202] Accordingly, the Commission adopts in this Order principles to ensure that consumers receive thorough, accurate, and understandable bills from their telecommunications carriers. First, consumer telephone bills must be clearly organized, clearly identify the service provider, and highlight any new providers; second, bills must contain full and non-misleading descriptions of charges that appear therein; and third, bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. Additionally, the Commission adopts minimal, basic guidelines that explicate carriers' obligations pursuant to these broad principles. These principles and guidelines are designed to prevent the types of consumer fraud and confusion evidenced in the tens of thousands of complaints that this Commission, and state commissions, receive each year.[203] In enacting the principles and guidelines contained in this Order, our goal is to implement the provisions of sections 201(b) and 258 to prevent telecommunications fraud, as well as to encourage full and fair competition among telecommunications carriers in the marketplace.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

74. In the IRFA, we found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by 5 U.S.C. § 601(3). The IRFA solicited comment on the number of small businesses that would be affected by the proposed regulations and on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

75. PCIA, Liberty, RTG and others argue that the cost of compliance faced by

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[201] *See* 5 U.S.C. § 604.

[202] 47 U.S.C. § 258. Our jurisdiction to enact truth-in-billing requirements also stems from section 201(b) of the Act. *See supra* Section II(B) (Legal Authority).

[203] State commissions and the FTC also have received thousands of complaints. *See, e.g.,* Kansas Commission comments at 1; FTC comments at 5. *See also* NASUCA reply at 2 (complaints received by FCC represent "tip of the iceberg"). *See supra* Sections I, II(A).

smaller carriers would be particularly burdensome.[204] PCIA asserts that medium- and small-sized carriers will be less likely to have billing systems in place that "can simply be 'tweaked' to produce the required modifications."[205] Indeed, PCIA states that smaller carriers may be forced to replace their entire billing systems in order to comply with the format and content mandates proposed in the *NPRM*.[206] RTG agrees, arguing that rural carriers are particularly sensitive to increased regulatory requirements with significant costs.[207]

76. The Office of Management and Budget (OMB) received a large number of comments in response to the *NPRM*.[208] The commenters generally agree that new charges or services need to be easily identifiable on customer bills; that definitions of services and other terms are difficult to reach and could be counterproductive; that more information, including point of contact toll-free numbers for service providers or billing agents needs to be included in billing materials; that materials should be clear, concise, and relatively simple; that the Commission must account for costs of any changes to bills that will be passed on to consumers in making decisions; that CMRS and other wireless firms that provide services only to businesses should be exempt from most new requirements that would be imposed on wireline carriers; that every effort should be made so that billing standards are uniform across the nation; that reseller information should be included; and that, where possible, market-based solutions should be adopted unless there is conclusory evidence that the Commission must enact regulations that affect billing practices.[209] As a result, OMB recommends that we not impose undue burdens on wireless providers and small wireline services, and urges that flexibility be given to small companies that may experience significant cost and managerial issues related to implementation of billing requirements.[210] Moreover, OMB recommends that the Commission allow companies sufficient time to address their necessary Year 2000-related modifications to their computer systems as well as modifying their billing systems to meet any new requirements.[211] OMB also recommends that the Commission make a concerted

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[204] PCIA comments at 9; Liberty comments at 2-3; RTG comments at 6-7; RCA comments at 3-5; PMT comments at 3-4.

[205] PCIA reply at 9.

[206] *Id.*

[207] RTG comments at 6-7.

[208] OMB Action at 2.

[209] *Id.*

[210] *Id.*

[211] *Id.*

effort to work with the industry to establish voluntary guidelines in lieu of mandatory requirements that restrict the ability of firms to tailor their billing to meet the needs of customers.[212]

77. We have considered these comments and believe we appropriately balanced the concerns of carriers that detailed rules may increase their costs against our goal of protecting consumers against fraud. We have exempted CMRS carriers from certain of our requirements on ground that the requirements may be inapplicable or unnecessary in the CMRS context.[213] Moreover, we consider our principles and guidelines to be flexible enough that carriers will be able to comply with them without incurring unnecessary expense.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the Order in CC Docket No. 98-170 May Apply

78. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules.[214] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[215] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[216] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[217]

79. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay

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[212] *Id.*

[213] *See infra* Sections II(A), III(A).

[214] 5 U.S.C. § 603(b)(3).

[215] *Id.* at § 601(6).

[216] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[217] Small Business Act, 15 U.S.C. § 632 (1996).

Service (TRS).[218] According to data in the most recent report, there are 3,459 interstate carriers.[219] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

80. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[220] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

81. Although some affected incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[221]

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[218] FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (*Telecommunications Industry Revenue*). We believe that the TRS Fund Worksheet Data is the most reliable source of information for our purposes because carriers file the TRS worksheets yearly and are instructed to select the single category of type of service provision that best describes them. Other sources of carrier data, such as the tariffs on file with the Common Carrier Bureau, may not reflect the same figures as the TRS Fund Worksheet Data, because such sources are not updated annually.

[219] *Id.*

[220] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[221] *See* 13 C.F.R. § 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.